

AMENDED IN ASSEMBLY MAY 31, 2001

AMENDED IN ASSEMBLY APRIL 24, 2001

AMENDED IN ASSEMBLY APRIL 16, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

## ASSEMBLY BILL

**No. 1311**

**Introduced by Assembly Member Goldberg**

February 23, 2001

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An act to amend Section 123110 of the Health and Safety Code, relating to medical records.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1311, as amended, Goldberg. Medical records: access.

Existing law requires that, within 30 days of receiving a written request, a health care provider shall provide a patient or his or her representative of all or any portion of the patient's medical records that the patient has a right to inspect, subject to the payment of a specified fee. A willful violation of this requirement by certain health care providers is an infraction.

This bill would require a health care provider to provide, within 30 days of receiving a written request from a patient or former patient or the patient's or former patient's representative, a copy, at no charge, of ~~all or any~~ *the relevant* portion of the patient's records, *as defined*, upon presenting to the provider proof that the records are needed to support ~~a claim or an~~ *an* appeal regarding eligibility for a public benefit program, under specified circumstances. *The bill would not apply these provisions to a patient represented by a private attorney, as defined, who is paying the patient's appeal costs pending the outcome of that appeal.*

Because the bill would change the definition of an infraction, it would constitute a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 123110 of the Health and Safety Code  
2 is amended to read:

3 123110. (a) Notwithstanding Section 5328 of the Welfare  
4 and Institutions Code, and except as provided in Sections 123115  
5 and 123120, any adult patient of a health care provider, any minor  
6 patient authorized by law to consent to medical treatment, and any  
7 patient representative shall be entitled to inspect patient records  
8 upon presenting to the health care provider a written request for  
9 those records and upon payment of reasonable clerical costs  
10 incurred in locating and making the records available. However,  
11 a patient who is a minor shall be entitled to inspect patient records  
12 pertaining only to health care of a type for which the minor is  
13 lawfully authorized to consent. A health care provider shall permit  
14 this inspection during business hours within five working days  
15 after receipt of the written request. The inspection shall be  
16 conducted by the patient or patient's representative requesting the  
17 inspection, who may be accompanied by one other person of his  
18 or her choosing.

19 (b) Additionally, any patient or patient's representative shall be  
20 entitled to copies of all or any portion of the patient records that  
21 he or she has a right to inspect, upon presenting a written request  
22 to the health care provider specifying the records to be copied,  
23 together with a fee to defray the cost of copying, that shall not  
24 exceed twenty-five cents (\$0.25) per page or fifty cents (\$0.50) per  
25 page for records that are copied from microfilm and any additional  
26 reasonable clerical costs incurred in making the records available.



1 The health care provider shall ensure that the copies are  
2 transmitted within 15 days after receiving the written request.

3 (c) Copies of X-rays or tracings derived from  
4 electrocardiography, electroencephalography, or  
5 electromyography need not be provided to the patient or patient's  
6 representative under this section, if the original X-rays or tracings  
7 are transmitted to another health care provider upon written  
8 request of the patient or patient's representative and within 15 days  
9 after receipt of the request. The request shall specify the name and  
10 address of the health care provider to whom the records are to be  
11 delivered. All reasonable costs, not exceeding actual costs,  
12 incurred by a health care provider in providing copies pursuant to  
13 this subdivision may be charged to the patient or representative  
14 requesting the copies.

15 (d) (1) Notwithstanding any provision of this section, *and*  
16 *except as provided in Sections 123115 and 123120*, any patient or  
17 former patient or the patient's representative shall be entitled to a  
18 copy, at no charge, of ~~all or any~~ *the relevant* portion of the patient's  
19 records, upon presenting to the provider a written request, and  
20 proof that the records are needed to support ~~a claim or an~~ *an appeal*  
21 regarding eligibility for a public benefit program. These programs  
22 shall include the Medi-Cal program, ~~the In-Home Supportive~~  
23 ~~Services program~~, social security disability insurance benefits,  
24 *and* Supplemental Security Income/State Supplementary Program  
25 for the Aged, Blind and Disabled (SSI/SSP) benefits, ~~and state~~  
26 ~~disability benefits~~.

27 ~~(e)~~. *For purposes of this subdivision, "relevant portion of the*  
28 *patient's records" means those records regarding services*  
29 *rendered to the patient during the time period beginning with the*  
30 *date of the patient's initial application for public benefits up to and*  
31 *including the date that a determination is made by the public*  
32 *benefits program with which the patient's application is pending.*

33 (2) *Although a patient shall not be limited to a single request,*  
34 *the patient or patient's representative shall be entitled to no more*  
35 *than one copy of any relevant portion of his or her record free of*  
36 *charge.*

37 (3) *This subdivision shall not apply to any patient who is*  
38 *represented by a private attorney who is paying for the costs*  
39 *related to the patient's appeal, pending the outcome of that appeal.*

1 *For purposes of this subdivision, “private attorney” means any*  
2 *attorney not employed by a nonprofit legal services entity.*

3 *(e) If the patient’s appeal regarding eligibility for a public*  
4 *benefit program specified in subdivision (d) is successful, the*  
5 *hospital or other health care provider may bill the patient, at the*  
6 *rates specified in subdivisions (b) and (c), for the copies of the*  
7 *medical records previously provided free of charge.*

8 *(f) If a patient or his or her representative requests a record*  
9 *pursuant to subdivision (d), the health care provider shall ensure*  
10 *that the copies are transmitted within 30 days after receiving the*  
11 *written request.*

12 ~~(f)–~~

13 *(g) This section shall not be construed to preclude a health care*  
14 *provider from requiring reasonable verification of identity prior to*  
15 *permitting inspection or copying of patient records, provided this*  
16 *requirement is not used oppressively or discriminatorily to*  
17 *frustrate or delay compliance with this section. Nothing in this*  
18 *chapter shall be deemed to supersede any rights that a patient or*  
19 *representative might otherwise have or exercise under Section*  
20 *1158 of the Evidence Code or any other provision of law. Nothing*  
21 *in this chapter shall require a health care provider to retain records*  
22 *longer than required by applicable statutes or administrative*  
23 *regulations.*

24 ~~(g)–~~

25 *(h) This chapter shall not be construed to render a health care*  
26 *provider liable for the quality of his or her records or the copies*  
27 *provided in excess of existing law and regulations with respect to*  
28 *the quality of medical records. A health care provider shall not be*  
29 *liable to the patient or any other person for any consequences that*  
30 *result from disclosure of patient records as required by this*  
31 *chapter. A health care provider shall not discriminate against*  
32 *classes or categories of providers in the transmittal of X-rays or*  
33 *other patient records, or copies of these X-rays or records, to other*  
34 *providers as authorized by this section.*

35 *Every health care provider shall adopt policies and establish*  
36 *procedures for the uniform transmittal of X-rays and other patient*  
37 *records that effectively prevent the discrimination described in*  
38 *this subdivision. A health care provider may establish reasonable*  
39 *conditions, including a reasonable deposit fee, to ensure the return*  
40 *of original X-rays transmitted to another health care provider,*



provided the conditions do not discriminate on the basis of, or in a manner related to, the license of the provider to which the X-rays are transmitted.

~~(h)~~

(i) Any health care provider described in paragraphs (4) to (10), inclusive, of subdivision (a) of Section 123105 who willfully violates this chapter is guilty of unprofessional conduct. Any health care provider described in paragraphs (1) to (3), inclusive, of subdivision (a) of Section 123105 that willfully violates this chapter is guilty of an infraction punishable by a fine of not more than one hundred dollars (\$100). The state agency, board, or commission that issued the health care provider's professional or institutional license shall consider a violation as grounds for disciplinary action with respect to the licensure, including suspension or revocation of the license or certificate.

~~(i)~~

(j) This section shall be construed as prohibiting a health care provider from withholding patient records or summaries of patient records because of an unpaid bill for health care services. Any health care provider who willfully withholds patient records or summaries of patient records because of an unpaid bill for health care services shall be subject to the sanctions specified in subdivision ~~(h)~~ (i).

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CORRECTIONS

Text — Pages 3 and 5.

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